

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 11 Case
)	Number <u>89-10275</u>
STEWART-HALL MARKETING, INC.)	
)	
Debtor in Possession)	
)	
WAGT-TV, INC.)	FILED
)	at 2 O'clock & 36 min. P.M.
Movant)	Date: 10-5-89
)	
vs.)	
)	
STEWART-HALL MARKETING, INC.)	
AND ROBERT STEWART)	
)	
Respondents)	

ORDER

WAGT-TV, Inc., a listed creditor in this Chapter 11 proceeding, has brought a motion for contempt against both debtor in possession, Stewart-Hall Marketing, Inc., and Robert Stewart, president of the corporation. Hearing was held pursuant to notice and based upon the evidence presented and argument of counsel, this court makes the following findings of fact and conclusions of law.

1. Stewart-Hall Marketing, Inc., debtor in possession, filed its petition for relief under Chapter 11 of Title 11 United States Code on February 28, 1989.

2. On May 16, 1989, the United States Trustee for the Southern District of Georgia brought a motion to convert this case to a case under Chapter 7. In addition, on May 9, 1989, Spartan Radio Casting Company d/b/a WSPA-TV7 brought its motion for partial relief from the automatic stay. Both motions were set for hearing June 9, 1989, at 2:00 p.m. As a party in interest, WAGT-TV, Inc. received notice of both hearings.

3. On June 9, 1989, immediately prior to the call of the aforementioned motions for hearing, debtor's counsel filed a motion for continuance. The motion for continuance provided in part:

. . . The basis for this motion is the illness of Mr. Bob's Stewart's mother. Mr. Stewart is the sole stockholder and employee of the debtor. Mr. Stewart's mother is an 80-year widow. She is a diabetic living alone and two weeks ago underwent a mastectomy in Lynchberg, Virginia. Mr. Stewart went to Lynchberg. He returned to Augusta this week but complications developed and he has had to return to Lynchberg as they are considering amputation of her foot because of the complications.

Mr. Stewart must get her back into the hospital and meet with doctors to make these decisions and be with his mother to help make these decisions.

The U. S. Trustee would not consent to the motion but stated that he would not oppose the motion.

Efforts to contact the attorney for Spartan, Richard Powell, were unsuccessful yesterday and this morning.

These hearings are set for 2:00 p.m., June 9, 1989.

WHEREFORE, debtor prays these motions be continued to a later date. (emphasis added by this court)

4. At the call of the motions for hearing, Mr. Wilson, attorney for the debtor, announced his motion for a continuance setting forth basically the allegations contained in the\written motion. No party in interest opposed the motion and a continuance was granted. Unknown to Mr. Wilson, the debtor's attorney,,at the time the representations were made to this court, the representations were false. At approximately 1:15 p.m. on June 9, 1989, Mr. Robert Stewart was engaged in playing a round of golf at the North Augusta Country Club in North Augusta, South Carolina.

5. At hearing on this motion for contempt Mr. Stewart attempted to explain his absence from court and the representations made by Mr. Wilson at the hearing on June 9, indicating that the allegations were in fact true and correct up until the day immediately proceeding the hearing when Mr. Stewart's mother's condition improved, and his attendance in Lynchberg, Virginia was not necessary. Mr. Stewart acknowledged that he had failed to communicate this to Mr. Wilson as he had thought Mr. Wilson had already secured the continuance.

WAGT has brought its motion seeking a citation of contempt against the debtor and Mr. Robert Stewart, the sole shareholder and employee of the debtor. In essence, WAGT seeks a determination that the debtor and debtor's controlling officer obstructed this court's

administration of justice under the Bankruptcy Code by procuring the continuance of hearings scheduled for June 9 through lies. The fact that Mr. Wilson, attorney for debtor in possession, did not know that the factual allegations in his motion for a continuance were false at the time the motion was presented, and that Mr. Stewart believed that Mr. Wilson had procured a continuance prior to his change in plans, does not obviate the necessity of the debtor in possession, through Mr. Stewart as its controlling officer, to notify counsel of record in this proceeding that in fact the allegations substantiating the motion for continuance were in fact false when presented. A bankruptcy court does have the inherent authority to determine as contemptuous any act which is calculated to embarrass, hinder or obstruct this court in the administration of justice or which is calculated to lesson its authority or its dignity. See "Contempt of Court", Black's Law Dictionary 288 (5th ed. 1979); United States v. Pearson, 62 F. Supp. 767 (N.D. Calif. 1945); United States v. Ross, 243 F. Supp 496 (S.D.N.Y. 1965). In the instant case, the allegation is that the actions of the debtor and debtor's principal officer were calculated to hinder the administration of justice. The purpose of civil contempt is to vindicate the rights of an aggrieved party through the imposition of sanctions against the contemtor and to compensate for damages sustained. Morgan v. Barry, 596 F. Supp. 897 (D.D.C. 1984); In re: Lemco Gypsum Inc., 95 B.R. 860 (Bankr. S.D. Ga. 1989). The defense offered by Mr. Stewart

to the effect that he held a mistaken good faith belief that he had no obligation to appear in court at the hearing in question is no defense. A finding of contempt does not require a specific intent, but merely a showing that the

contemptor knew or should have known that his conduct hindered the administration of justice. Ahmed v. Reiss Steamship Co., 580 F. Supp. 737 (N.D. Ohio 1984), aff'd. sub. nom. In re: Jacques, 761 F.2d 302 (6th Cir. 1985), cert. den., 475 U.S. 1044, 106 S.Ct. 1259, 89 L.Ed.2d 570 (1986). In the instant case, Mr. Stewart failed to inform the attorney for the debtor that he was not required in Lynchberg, Virginia on the day of hearing. Had he so informed counsel, as counsel had not secured a continuance, the hearing in question could have proceeded. As a result of Mr. Stewart's actions and inactions, movant has suffered loss to the extent of Two Hundred Fifty and No/100 (\$250.00) Dollars in attorneys fees incurred for counsel's attendance at the previous hearing scheduled for June 9 and for the preparation and the bringing of this motion.

Pursuant to the foregoing findings of fact and conclusions of law, it is the order of this court that:

1. Stewart-Hall Marketing, Inc., debtor in possession in this proceeding, and Robert Stewart are in civil contempt of this court for obstructing this court in the administration of justice under the Bankruptcy Code by procuring through false representations

to the court a continuance of hearing set for June 9, 1989.

2. A judgment in favor of WAGT-TV, Inc. against Stewart-Hall Marketing, Inc. and Robert Stewart is hereby entered in the amount of Two Hundred Fifty and No/100 (\$250.00) Dollars as

compensation to WAGT-TV, Inc. for damages suffered by it as a result of the contempt of Stewart-Hall Marketing, Inc. and Robert Stewart. This judgment shall include future interest from the date' of this judgment as determined by law.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 5th day of October, 1989.